

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)
)
Advanced Television Systems)
and Their Impact Upon the)
Existing Television Broadcast)
Service)

MM Docket No. 87-268

To: The Commission

PETITION FOR RECONSIDERATION

Montgomery Communications, Inc. ("Montgomery"), licensee of low power television Station K17CK, Emporia, Kansas ("K17CK" or the "Station"), by its attorneys, hereby submits this Petition for Reconsideration of the *Sixth Report and Order* in the above-referenced proceeding.¹ Montgomery currently operates four low power television stations in the Topeka Area of Dominant Influence ("ADI"), one of which is K17CK on Channel 17 in Emporia, Kansas, and all of which are collectively the exclusive source of FOX network programming for that ADI. The Commission has allotted digital Channel 17 to Station KAAS-TV ("KAAS"), which currently operates on analog Channel 16 in Salina, Kansas, approximately 130 kilometers away from K17CK. If that allotment is permitted to stand, K17CK's operation on Channel 17 in Emporia will impermissibly interfere with operation of the digital facilities of KAAS on Channel 17 in Salina, and K17CK will be forced to cease operation. Because such displacement of K17CK will result in a substantial loss of local and FOX network programming and can be

¹ *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Sixth Report and Order*, MM Docket No. 87-168, FCC 97-115 (released April 21, 1997).

avoided in a manner that complies with the Commission's rules and does not result in harm or interference to any other party, the Commission must act in the public interest of the local residents of Emporia, Kansas, and the Topeka ADI by reconsidering its allotment of Channel 17 to KAAS and allotting a different digital channel to that station which would allow K17CK to continue to provide its valuable local programming to Emporia and the Topeka ADI.

Montgomery has attempted since 1993 to acquire a station in the section of the Topeka ADI currently served by K17CK.² Finally, on April 29, 1996, the assignment of the then dark Station from Eric Jacobsen, d/b/a Generic Television, to Montgomery was consummated.³ During the next available filing window, on May 17, 1996, Montgomery filed an application to make major changes in the Station's operation, including changing the transmitter site and the community of license to Emporia in order to allow the then inoperable Station to be rebuilt and to better serve residents in the southwest portion of the Topeka ADI. The Commission granted the major change application on January 22, 1997. The Station resumed broadcast operation on February 5, 1997, and an application for license to cover the construction permit was recently granted on February 25, 1997. Thus, Montgomery has spent many years of time, efforts and financial resources to acquire the Station and return it to the air, only to have its future completely eradicated by the allotment of its channel of operation to its competitor for purposes of transitioning to digital television.

² Montgomery filed an application (FCC File No. BPTTL-931101) with the FCC on November 1, 1993, for a construction permit to build a new station on Channel 17 at Topeka, K17CK former community of license. That application was mutually exclusive with the renewal application for the station and was later rejected by the Commission.

³ FCC File No. BALTTL-960131IA (assignment application).

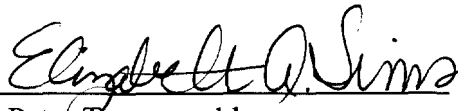
K17CK is one of four in a close network of stations -- all LPTV -- that provides the exclusive source of FOX network programming and a valuable source of locally produced programming that cannot be obtained elsewhere in the Topeka ADI. The other area Montgomery stations are (1) KTMJ-LP, Junction City, Kansas; (2) K15DQ, Manhattan, Kansas; and (3) K43EO, Topeka, Kansas. In order to avoid the unnecessary loss of this valuable programming to a substantial portion of the ADI, the Commission should allot another digital channel to KAAS and allow K17CK to continue operating on Channel 17 at Emporia. The Engineering Statement attached hereto as Exhibit A states that there are at least two other channels (46 and 50) in the proposed core spectrum of Channels 7-51 that could be allotted to KAAS for the provision of digital television, without displacing K17CK or any other low power television or translator station. These alternative channels fully comply with the spacing requirements of Section 73.623(d)(1) of the Commission's rules with respect to all authorized or proposed analog television stations as well as all of the digital television allotments set forth in the *Sixth Report and Order's* digital allotment table. Thus, there is absolutely no reason the Commission cannot or should not allot a different digital channel for KAAS and prevent the unnecessary loss of K17CK's local and FOX network programming in Emporia and the surrounding geographic area.

For the above reasons, Montgomery respectfully requests that the Commission reconsider its decision in the *Sixth Report and Order* and modify the digital allotment table in such a way

that will prevent unnecessary displacement of K17CK and loss of the Station's vital local and FOX network service to the residents of Emporia, Kansas and the Topeka ADI.

Respectfully submitted,

MONTGOMERY COMMUNICATIONS, INC.

By: 
Peter Tannenwald
Elizabeth A. Sims

Its Attorneys

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June 13, 1997

EXHIBIT A

ENGINEERING STATEMENT IN
SUPPORT OF PETITION FOR
RECONSIDERATION

MM DOCKET 87-268

Montgomery Communications, Inc.
Emporia, KS

June 12, 1997

Prepared for: Mr. Robert Raff
Montgomery Communications, Inc.
222 W. Sixth Street
Junction City, KS 66441

CARL E. SMITH CONSULTING ENGINEERS

ENGINEERING AFFIDAVIT

State of Ohio)
) ss:
County of Summit)

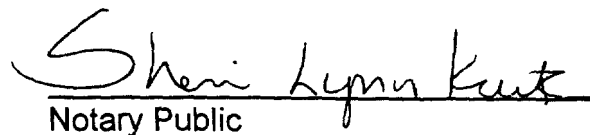
Roy P. Stype, III, being duly sworn, deposes and states that he is a graduate Electrical Engineer, a qualified and experienced Communications Consulting Engineer whose works are a matter of record with the Federal Communications Commission and that he is a member of the Firm of "Carl E. Smith Consulting Engineers" located at 2324 North Cleveland-Massillon Road in the Township of Bath, County of Summit, State of Ohio, and that the Firm has been retained by Montgomery Communications, Inc., to prepare the attached "Engineering Statement In Support Of Petition For Reconsideration - MM Docket 87-268."

The deponent states that the Exhibit was prepared by him or under his direction and is true of his own knowledge, except as to statements made on information and belief and as to such statements, he believes them to be true.



Roy P. Stype, III

Subscribed and sworn to before me on **June 12, 1997.**



Notary Public

/SEAL/

SHERI LYNN KURTZ, Notary Public
Residence - Summit County
State Wide Jurisdiction, Ohio
My Commission Expires June 14, 2000

ENGINEERING STATEMENT

This engineering statement is prepared on behalf of Montgomery Communications, Inc., licensee of Low Power TV Station K17CK - Emporia, Kansas. It supports a petition for reconsideration of the Sixth Report and Order in MM Docket 87-268.

K17CK operates on Channel 17 with a nondirectional peak visual effective radiated power of 22.3 kilowatts. The K17CK transmitter site is located 129.8 kilometers east-southeast of the transmitter site of KAAS-TV - Salina, Kansas, whose licensed analog operation is on Channel 18. The DTV Table of Allotments adopted in this proceeding allotted Channel 17 to Salina for DTV use by KAAS-TV with an effective radiated power of 50 kilowatts at 317 meters above average terrain. The K17CK 20 dBu (F(50,10)) contour totally encompasses the 41 dBu (F(50,90)) contour for the Channel 17 DTV facilities authorized for KAAS-TV in this table, in violation of Section 74.706(d) of the FCC Rules. Thus, it is obvious that continued operation by K17CK on Channel 17 would cause interference to the DTV facilities authorized for KAAS-TV in this table.

Given the limited use of the TV spectrum in this area, however, there is no reason why it should be necessary for K17CK to have to cease operating on Channel 17 in order to accommodate DTV operation by KAAS-TV. It has been determined that there are at least two other channels (46 and 50) in the proposed "core" spectrum (Channels 7-51) which can be utilized by KAAS-TV for DTV operation without displacing any LPTV or TV translator stations while also fully complying with the spacing requirements of Section 73.623(d)(1) of the FCC Rules to all authorized or proposed analog TV stations and all DTV allotments contained in the Table of DTV Allotments adopted in this proceeding. Additional channels would almost certainly be available for DTV use by KAAS-TV without displacing any LPTV or TV translator stations under the less restric-

tive interference criteria outlined in Section 73.623(c) of the FCC Rules for modifications to DTV allotments contained in the initial Table of Allotments.

Based upon the above information, it appears that the allotment of Channel 17 to Salina, Kansas, for DTV use by KAAS-TV will needlessly displace K17CK - Emporia, Kansas, when an alternate channel could have been allotted which would not have displaced any LPTV or TV translator stations. Thus, the public interest would be better served by allotting one of these alternate channels to Salina for DTV use by KAAS-TV.

CERTIFICATE OF SERVICE

I, Vanessa N. Duffy, hereby certify that on this 13th day of June, 1997, a copy of the foregoing "Petition for Reconsideration" has been served by U.S. first-class mail, postage prepaid, upon the following:

Randy Pratt, General Manager
Station KAAS-TV
316 N. West Street
Wichita, KS 67203

Vanessa N. Duffy
Vanessa N. Duffy